



North Carolina General Assembly

ENVIRONMENTAL REVIEW COMMISSION

MINUTES

February 18, 2010

Welcome and Attendance

The Environmental Review Commission of the North Carolina General Assembly met Thursday, February 18, 2010 in Room 544 of the Legislative Office Building.

Co-Chairman Dan Clodfelter presided.

Also present with Co-Chairman Clodfelter was Co-Chairman Bob Atwater, Co-Chairman Lucy Allen, Co-Chairman Pryor Gibson, Senator Stan Bingham, Senator Katie Dorsett, Senator Floyd McKissick, Senator A. B. Swindell, Representative Pricey Harrison, Representative Ruth Samuelson, Representative Edith Warren and Advisory Member Representative Russell Tucker.

Staff present was Senior Commission Counsel Jennifer McGinnis, Senior Commission Counsel Jeffrey Hudson, Commission Counsel Susan Iddings, Commission Counsel Tim Dodge, Commission Analyst Jennifer Mundt, Research Assistant Mariah Matheson and Commission Clerk Jessica Kozma Proctor.

Co-Chairman Clodfelter called the meeting to order at 10:15 a.m. and welcomed members and guests. The presiding Co-Chairman then noted that members had received copies of minutes for the Commission from October 15, 2009 and November 12, 2009. He asked if there were any changes to the minutes. Hearing none, he asked for a motion to approve. A motion was given by Co-Chairwoman Allen and seconded by Representative Samuelson. Minutes were approved by unanimous vote.

Ms. McGinnis was then asked to review the day's agenda.

A draft agenda was distributed electronically February 10, 2010. Reminders of the meeting were sent electronically February 16 and 17, 2010.

Annual Report on the status of leaking petroleum underground storage tanks, the State cleanup fund and the Groundwater Protection Loan Fund (G.S. 143-215.94M)

Mr. Grover Nicholson, Chief of the Underground Storage Tank Section with the (DWM) of the North Carolina Department of Natural Resources (DENR) was recognized by Co-Chairman Clodfelter. A handout that was distributed in conjunction with his presentation, entitled "Report to the Environmental Review Commission on the North

Carolina Underground Storage Tank Program,” may be found on the Commission’s website at www.ncleg.net and is attached to the minutes. His presentation included a description of the progress of the program through June 30, 2009.

Mr. Nicholson reported that of the almost 17,000 petroleum releases from regulated USTs discovered, roughly 10,500 were currently cleaned up and closed, leaving some 6,500 releases yet to be cleaned up. Mr. Nicholson reported that cleanup efforts were underway for some 2,296 estimated high risk and intermediate risk regulated UST releases. On average, he continued, 426 new releases are discovered each year, although over the past ten years more releases were closed than discovered.

“Slow progress is being made to clean up the backlog of releases,” Mr. Nicholson said.

However, the amount of unregulated UST releases needing cleanup is slowly increasing, Mr. Nicholson reported. Roughly 550 new releases are reported each year, with 510 cleaned up and closed. In addition to the unregulated releases, there are records of approximately 6,800 UST systems that are closed with no releases discovered.

Continuing his presentation, Mr. Nicholson reported that in September of 2006, the EPA notified DENR that the existing Commercial Cleanup Fund provided by the State may not prove to be a viable financial “responsibility mechanism” for UST owners and operators in the State. The General Assembly responded in 2008 with legislation made effective January 2009, increasing operating fees charged to UST owners and operators, thus increasing available funds.

Discussing prevention efforts, Mr. Nicholson reviewed three ways the State has strengthened efforts to prevent releases from USTs.

Concerning those three ways:

- 1) “North Carolina has enacted statutes and rules requiring all components of new and replacement UST systems to be secondarily contained—that is, to be double-walled and have interstitial monitoring devices that will alert UST operators of the presence of liquid in the space between the inner and outer walls.”
- 2) “ ... North Carolina has increased the frequency of compliance inspections of UST facilities ... part of the increase in fee revenue is used to hire, train and equip those additional compliance inspectors so that the UST program can inspect every UST facility at least once every three years.”
- 3) “ ... North Carolina is instituting training for UST system operators by incorporating operator training into the compliance inspection process ... (T)he UST program has developed, and implemented, a formal operator training program (tank school) for operators whose systems are found to be significantly out of compliance during compliance inspections.”

Mr. Nicholson then reported on American Recovery and Reinvestment Act (ARRA) awards for the State. To date, the State (DENR) has received a \$7,554,000 grant from the EPA for assessment and cleanup efforts at 172 UST releases across the state. This grant was one among some \$200 million appropriated by ARRA to address leaking storage tank cleanups. All funds are to be expended by September 30, 2011.

Continuing, Mr. Nicholson reported that more than 97 percent of the ARRA grant has been obligated for contract work. In addition, roughly \$700,000 is allocated for work on the first 65 releases, \$96,000 expended on cleanup, and \$19,000 used for administrative costs. He then discussed “legislative actions to call in outstanding claims.”

Following amended legislation from the 2007 Session of the General Assembly, UST owners are encouraged to “call in” all claims against the Cleanup Funds that have not yet been filed. The goal of this is to continue a current baseline determination of the “true amount of North Carolina’s obligation for reimbursement of cleanup costs.”

In December 2009, the UST Section received 407 Commercial Cleanup Fund reimbursement claims, Mr. Nicholson reported, totaling roughly \$2,900,000. He then reviewed recommendations from his section’s Annual Report.

Among these recommendations:

- “Transition from (to ultimately terminate) providing required financial responsibility for owners and operators of regulated, commercial USTs from the Commercial Cleanup Fund to other FR mechanisms, such as private insurance, bonding, letters of credit, self-insurance and others ...”
- “Prevent releases by maintaining the triennial compliance inspection frequency for UST systems in North Carolina ...”
- Prevent releases by enacting legislation requiring UST owners and operators to receive training in UST system operation, including release prevention and detection ...”
- Continue to find and implement better and more cost-effective methods for assessing and cleaning up petroleum releases, including reviewing existing rules and regulations and reducing or eliminating requirements whenever practical while maintaining a sufficient level of protection for public health and the environment ...”
- “Continue to encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents.”

Concluding his presentation, Co-Chairman Clodfelter thanked Mr. Nicholson and called for discussion and questions from Commission membership. Co-Chairman Allen commented that all legislative members work with constituents in their districts on UST cleanup. “There is not a soul up here that doesn’t have a nightmare with UST.”

Co-Chairman Gibson questioned the cost of cleanups. Saying that he knew further legislation would be needed to address the subject, Co-Chairman Gibson commented that current costs per cleanup were “horrible,” adding that “we have to figure out some way to adjust how we evaluate or at least have a system for the general public and the tank owner.” Co-Chairman Gibson thanked him for his “diligent” work.

Conversation continued between Co-Chairman Gibson and Mr. Nicholson, with Co-Chairman Gibson commenting that he was concerned of high spending with low closure on cases. Senator McKissick asked whether fiberglass tanks were double-walled, to which Mr. Nicholson answered that they were.

Co-Chairman Clodfelter commented that the State “should get out of the funding program, as most states have done.” The Co-Chairman then asked to look at current

legislation and an executive summary provided by the General Assembly's Program Evaluation Division. In the executive summary it is estimated that it will take 25 years to complete the cleanup of the State's commercial backlog (with its current funding); that the State's liability is increased because of tank owners reliance on the Commercial Fund for cleanup costs; that non-commercial solvency is in jeopardy as the State continues to pay total costs for cleanups and; operation limitations limit the Section's ability to prevent and cleanup incidents.

Co-Chairman Clodfelter continued saying that the State "should not be in the insurance business," adding that Commission Co-Chairmen might consider drafting legislation addressing this for the upcoming session. Discussion quelled and Co-Chairman Clodfelter recognized the next presenter, thanking her in advance for her presentation.

Presentation of the findings of the annual solid waste management report

Ms. Ellen Lorscheider, the Head of the Solid Waste Planning and Program Management Branch of the Solid Waste Section (DENR) was recognized by Co-Chairman Clodfelter. A copy of her presentation may be found on the website at www.ncleg.net and is attached to the minutes. Ms. Lorscheider reviewed the State's municipal solid waste landfills as well as the construction and demolition of municipal solid waste landfills. She noted that "activities of society" were the largest producer of waste, including homes, industries and business. The second largest producer of the State's waste was construction and demolition. Because of this, there are 60 landfills specified solely for construction and demolition waste. She then reviewed tonnage of the State waste from the early 1990s until 2009, showing a peak in mid-1996 but a decline since. This year, there were 9.9 million tons of wastes. She continued that there are 9.2 million people in the State, and that the tonnage of waste is almost "equal" per capita, some 1.07 tons per capita.

She reviewed another slide showing 60 tons of waste from homes, business, industry and institutions. Ms. Lorscheider noted that the 9.9 tons might sound bad, but that it is the same amount of waste disposed some 21 years before, when the State first began collecting waste data. This is despite a dramatic increase in population versus a gradual decline in waste, with some peaks along the way.

Ms. Lorscheider then reviewed reasons to keep waste disposal at reasonable levels, including air and water quality, as well as disposal costs and the benefits of recycling programs. She added that the recession has positively impacted waste disposal as less construction led to less construction waste.

Ms. Lorscheider completed her presentation. Co-Chairman Clodfelter thanked her again and called for discussion from Commission membership.

Representative Tarleton asked how the State compared to other states. Ms. Lorscheider answered that she did not know. Representative Tarleton followed up saying that anecdotally he did not feel that the State did a good job with its recycling programs, and that there needed to be improved outreach and education projects to encourage state residents to recycle. Senator Swindell commented that he learned once in a federal position that "the first law of garbage is everybody wants you to pick it up and nobody

wants you to put it down ... if you aren't selling shoes, no shoe boxes go out the back door."

Senator Bingham complimented the Town of Garner for its recycling program. He added that he has shared Garner's program with other small towns, and these towns have successfully copied the program.

Co-Chairman Clodfelter recognized Mr. Scott Mouw to discuss the State's recycling markets.

Presentation on the status of recycling and recycling markets in North Carolina

Mr. Scott Mouw, the Chief of the Community and Business Assistance Section for the Division of Pollution Prevention and Environmental Assistance in DENR. Mr. Mouw thanked the Commission and Co-Chairman and began his presentation. A copy of his presentation may be found on the Commission's website at www.ncleg.net and is attached to the minutes.

Reviewing market prices, Mr. Mouw noted that prices have: "followed the general trends in the global economy; from all time highs in 2008, dropped dramatically with the onset of the recession; rebounded to historically average levels or above and; shown that demand heating for some key commodities that will lead to strong pricing in 2010."

Mr. Mouw continued reviewing graphs (found on page one of his report) detailing the "price history for key container materials" and "recent recycling price history for key fiber commodities." He then reviewed another graph showing local government recycling efforts, with items recycled delineated among items recycled such as glass, paper, plastics, metals and so forth.

Reviewing the collection of container materials, Mr. Mouw showed that efforts have overall increased during the past ten years, with a decline in 2004-2005. Recycling efforts currently are at the highest they have been in a ten year period. He then listed the top ten per capita recycling counties. These include Pitt, Catawba, Dare, Buncombe, Orange, Swain, Macon, Watauga, Guilford and Pamlico.

Previewing that the next speaker will discuss a similar topic, Mr. Mouw discussed how the need for recycled plastic bottles has continually increased. He added that interest in recycling among State residents continues to increase, and that there a positive trend exists in the growth of recycling programs statewide.

Senator Swindell said that there is a company in his district that manufacturers 1 billion beer bottles a year. He said that it "was a shame" that this company had to purchase its cullet from across the country rather than solely North Carolina. Mr. Mouw agreed and said that a newly enacted ABC restaurant and bar recycling law needs to be examined and perhaps better enforced. Representative Harrison asked about mercury, saying there was a "great bill" in the Senate. Mr. Mouw said that Senate bill would better regulate mercury, potentially keeping it from landfills and having mercury devices removed prior to building demolition. Some communities have begun their own collection programs for mercury laden items, he added, and Progress Energy has created a new program to collect fluorescent lights.

Co-Chairman Gibson asked when recycling would become a “great success.” Mr. Mouw said that success would mean recycling more than 50 percent of discarded bottles, but working to exceed that percentage is critical for the future.

Co-Chairman Clodfelter thanked Mr. Mouw and recognized the next speaker.

Presentation from Clear Path Recycling

Mr. Ron Salati, Vice President and General Manager of Clear Path Recycling, LLC was recognized by Co-Chairman Clodfelter. Mr. Salati used a PowerPoint presentation that is attached to the minutes and may be found online at the Commission’s website, www.ncleg.net.

Mr. Salati began with a review his company’s ownership and creation. Owned by DAK Americas LLC and Shaw Industries. Shaw Industries is a subsidiary of Berkshire Hathaway, Inc. DAK Americas is one of the largest PET, fiber and PTA producers in the country; Shaw is one of the largest carpet and flooring producers in the world. In all, the two companies employ roughly 29,200 people.

The Clear Path startup plan includes two phases to process “post-consumer” bottles. In its building phase, the company provided 30 to 40 temporary jobs. Currently, there are 16 permanent employees. The company’s plans show an anticipated growth of 80 additional jobs created by the fourth quarter of 2010 and an additional 29 jobs created in Phase Two of the company’s “post-consumer” bottle collection program.

Mr. Salati reviewed slides to assist in explaining infrastructure and other progress in bringing Clear Path to fruition. He said that most jobs are performed by North Carolina residents. He added that an advantage to Clear Path is that although a “start up” company, its two parent companies are financially well-footed, so Clear Path can begin production without any debt.

He continued reviewing the plant’s adherence to Brownfield’s regulations as well as its burgeoning growth as a facility. He then thanked the Commission. Co-Chairmen Clodfelter thanked Mr. Salati and called for questions and discussion among members. Representative Samuelson said that in some places it is worthwhile for people to pick bottles from the trash for money, and asked if there are times that bottles become so worthwhile that the need and profit from these bottles may encourage new business. Mr. Salati said he did not think so as of yet. Mr. Mouw added that there are more and more businesses collecting and transporting recycled item for processing. Co-Chairman Clodfelter thanked Mr. Salati and commented that it was good to see green jobs in different areas.

Annual report on the Inactive Hazardous Sites Program

Co-Chairman Clodfelter called on Ms. Charlotte Jesneck, Head, Inactive Hazardous Sites Branch, Superfund Section with the Division of Water Management with DENR.

Ms. Jesneck reviewed the revenues and collections of claims paid out under this program. Pursuant to at Senate Bill 6, solid waste landfill applicants could make a claim for reimbursement. In Ms. Jesneck’s program, there are 233 cleanups being supervised by

staff. In addition, program staff assists with bankruptcy claims and the discovery of hazardous sites.

In concluding her report, Co-Chairman Clodfelter called for questions and discussion. Representative Harrison asked how costs for a “volunteer” cleanup could increase significantly from the 2007 to the 2009 budget. Ms. Jesneck said that once a volunteer enters an agreement, and that site is a priority, there is a cap of five million dollars.

Co-Chairman Gibson asked rhetorically if “five million of responsible cleanup is better than \$50 million of (ir)responsible cleanup.” He followed saying that he wanted to talk about non-responsible parties. He added that it was important to start addressing the 1500 identified sites that are neither considered priorities nor have responsible parties to work with the Division.

Annual report on the effectiveness of the Brownfields Property Reuse Act

Co-Chairman Clodfelter thanked Ms. Jesneck and recognized Mr. Bruce Nicholson, Brownfields Program Manager with Division of Water Management, DENR. Mr. Nicholson used a PowerPoint presentation with his report. This presentation is attached to the minutes and may be found on the Commission’s website at www.ncleg.net.

Mr. Nicholson began his report discussing the public policy of the Brownfields Program, including its charges to: a) address contaminated sites with redevelopment potential in a way that encourages safe development; b) preserves responsible party liability to discourage future contamination and; c) sets up two public policies on cleanup, one for polluters and one for non-polluters. He then reviewed hypothetical cases as well as the breadth of Brownfields cleanup sites. Of these sites, he said, there are thousands of “abandoned, idled or underused properties where redevelopment is hindered by real or perceived environmental contamination.”

Reviewing the Brownfields Property Reuse Act of 1997, Mr. Nicholson reviewed the Act’s specific mechanisms available to assist re-development, including: a) creating a special class of remediating parties; b) providing (responsible parties) with liability protection in return for measures that make property safe for reuse; c) providing (responsible) parties with a tax incentive to assist in costs and; d) ensuring enforceability of Land Use Restriction as per the act.

Reviewing where the program currently stands, Mr. Nicholson said that more than 150 Brownfields agreements are recorded, with \$4 billion in facilitated private investment. Five municipalities and the Land-of-Sky Council have received Brownfields grants and another seven municipalities are in the application process. Showing a map of completed Brownfields agreements, Mr. Nicholson said that although a majority of agreements are in the Charlotte area, agreements are spread out throughout the state.

He then reviewed economic development success factors affected by the program. These include:

- Defined and limited liability;
- Break barriers to financing;
- Financial and tax incentives;

- Controlled and defined cleanup costs;
- Land use planning and decisions;
- Addressing public health;
- Risk communication to the public;
- Return investments.

He reviewed the grant process and re-development projects currently underway with the Brownfields program, including the RBC Plaza in Raleigh. In closing his report, Mr. Nicholson thanked the Commission. Co-Chairman Clodfelter thanked him for his report.

Adjournment

The meeting was adjourned at 1:15 p.m.

Co-Chairman Dan Clodfelter
Presiding

Co-Chairman Pryor Gibson

Jessica Kozma Bennett
Commission Clerk